

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

EDWARD LINDSEY,
Petitioner,

v.

WILLIAM MUNIZ,
Respondent.

Case No. [18-cv-05786-SI](#)

ORDER OF DISMISSAL

Re: Dkt. Nos. 1, 3, 7

Petitioner, currently incarcerated at Salinas Valley State Prison, filed a *pro se* petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 to challenge his 2008 conviction in Alameda County Superior Court for first degree murder. The petition is his third federal habeas petition concerning that conviction. His first federal habeas petition, *Lindsey v. Hedgpeth*, No. 11-cv-638 SI, was denied on July 10, 2012. This court and the Ninth Circuit denied a certificate of appealability, and this court denied numerous post-judgment motions to reopen the case. Lindsey also filed a second federal habeas petition, *Lindsey v. Hedgpeth*, No. 14-cv-002 SI, that was dismissed as an unauthorized second or successive petition.

A second or successive petition may not be filed in this court unless the petitioner first obtains from the United States Court of Appeals for the Ninth Circuit an order authorizing this court to consider the petition. 28 U.S.C. § 2244(b)(3)(A).

Petitioner has not obtained an order from the Ninth Circuit permitting the filing of a second or successive petition, and this court cannot entertain a new petition from petitioner until he first obtains permission from the Ninth Circuit to file such a petition. Accordingly, this action is **DISMISSED** without prejudice to petitioner filing a petition in this court after he obtains the necessary order from the Ninth Circuit.

1 If petitioner wants to attempt to obtain the necessary order from the Ninth Circuit to file a
2 second or successive petition to challenge his conviction and sentence, he should file an
3 “Application For Leave To File Second Or Successive Petition” in the Ninth Circuit (at 95 Seventh
4 Street, San Francisco, CA 94103). A copy of the form application is enclosed with this order for
5 his convenience.

6 Petitioner’s motion for appointment of counsel is DENIED. Docket No. 3. The appointment
7 of counsel is not appropriate when, as here, the action is being dismissed.

8 Petitioner’s *in forma pauperis* application is DENIED. Docket No. 7. Petitioner must pay
9 the \$5.00 filing fee no later than **December 14, 2018**.

10 The clerk shall close the file.

11 **IT IS SO ORDERED.**

12 Dated: October 26, 2018

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14 SUSAN ILLSTON
15 United States District Judge
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